WORKERS' COMPENSATION ADVISORY COUNCIL

MINUTES ~ ~ OCTOBER 12, 2000 MEETING [1:00 P.M.]
710 JAMES ROBERTSON PARKWAY
HEARING ROOM, FIRST FLOOR
ANDREW JOHNSON TOWER
NASHVILLE, TENNESSEE

The meeting was called to order by Mr. Steve Adams, State Treasurer

Voting members in attendance:
Mr. Jack Gatlin [by proxy to Mr. Neeley]
Mr. Dave Goetz
Mr. James G. Neeley
Mr. Bob Pitts

Nonvoting members in attendance:
Ms. Jacqueline Dixon
Ms. Abbie Hudgens [by telephone conference call]
Mr. Jerry Mayo

Ex officio members in attendance:
Commissioner Michael E. Magill, Department of Labor and Workforce Development
Mr. Neil Nevins, Assistant Commissioner, Department of Commerce & Insurance
[designee for Commissioner Anne Pope]

Also present:
M. Linda Hughes, Executive Director
Mr. Dale Sims

Mr. Adams called the meeting to order. Minutes from the September meeting were not available.

NEW BUSINESS

1. DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT UPDATE

Commissioner Michael E. Magill introduced Ms. Sue Ann Head, Administrator of Workers' Compensation, who updated the Advisory Council on the following issues:

A. WORKERS' COMPENSATION COMPUTER SYSTEM

Ms. Head reported the following information about the computer system which became operational in July, 1999:
>The Department is using Prison Industries for additional assistance in data entry and they expect to be current on entry of all First Reports of Injury by January 1, 2001.
>By December 1, 2000, the Department expects to implement EDI [Electronic Data Interchange] to receive Proof of Coverage forms electronically.
>By the Spring to early-Summer, 2001, the Department hopes to begin receiving First Reports of Injury electronically.
>Imaging of all workers' compensation forms will begin its test phase on November 24, 2000. Every first report or medical report received by the Department will become an image and when the form is verified as imaged into the system, the paper form will be destroyed as the goal is to become paperless after EDI and imaging is in place. The image system is expected to be fully operational in December, 2000.

Mr. Neeley inquired whether the Department has the capacity, once data entry is current, to stay current. Ms. Head responded the Department will continue to use temporary help in the first few months of the year prior to full implementation of EDI to make sure data entry remains current. However, once the EDI system is fully operational for First Reports the Department should be able to stay current with its data entry. She also indicated the system will track whether the Department is receiving required forms from insurance companies and employers on a timely basis.

B. STATISTICAL DATA FORM

Ms. Head reported that approximately 75% of the SD1 forms received since July, 1999 have been entered into the computer system. She also noted a substantial number of the SD1 forms are not complete. The Department is working on revising the form to make it more "user friendly" and when it has been revised it will be placed on the Department's web site and disks will be made available. The Department hopes the revised form will be available within two weeks. Additionally, the Program Coordinators will spend the better part of the winter visiting all of the clerks and the legal community to deliver disks in an effort to educate the clerks and the legal community regarding the SD1 forms.

Although the forms received are not substantially complete, the Department decided to enter the data from the received forms into the computer system. Because the statute provides that a case is not final until a completed form is received, Mr. Sims questioned whether the Department owes a duty to notify the defendant's attorney that the case is not final because the form is not fully completed. Mr. Pitts urged the Department to work with the Judicial Conference or Clerk's Association to educate them concerning the SD1 form.

C. IMPLEMENTATION OF CIVIL AND CRIMINAL PENALTIES FOR NONCOMPLIANCE

As of October 2, 2000, the Department had assessed 21 penalties for the failure to obtain or to maintain workers' compensation insurance coverage. These monetary penalties totalled $172,791 and none of the penalties have been collected. These monetary penalties were assessed under the current statute which does not provide a mechanism for collection of the penalties. These uncollected penalties have been turned over to the Department's General Counsel, Mark Reineke, who is working with the Attorney General's office to determine if the penalties can be collected.

Mr. Mayo asked whether the "fined" employers have obtained coverage and Ms. Head indicated the Department cannot verify that coverage has been obtained. She indicated the majority of these employers have not responded to the Department's inquiries. The Commissioner stated the Department has performed due diligence in order to determine whether the employers are required to have coverage and these employers have been non-responsive to the Department's efforts to determine compliance.

Ms. Head reported the Department is in the process of establishing the positions for the Uninsured Employers Fund and an attorney in the Benefit Review Section will start writing the administrative rules for the program which should be operational by January, 2001. She also indicated the Department is working with the Employment Security Division and the Contractors' Licensing Board to assure employers are informed of the enhanced penalties which will become effective in January, 2001.

She stated the Department feels it will identify approximately 1000 employers who failed to obtain or maintain workers' compensation insurance in the past year. Commissioner Magill pointed out this number equals only one percent (1%) of the 112,000 employers in Tennessee. The Commissioner also pointed out when the list of noncompliant employers is released before December 31, it is only a snapshot in time and should not be used for any other purpose as it will not be accurate for any other time period.

Mr. Neeley inquired as to the type of businesses included in the 21 "fined" employers and Ms. Head stated it is a mix of employers comprised primarily of small contractors although it does include one manufacturer with 40 employees. Ms. Head indicated she would update the Advisory Council at a later date with additional information concerning these 21 "fined" employers.

Mr. Sims and members of the Advisory Council expressed concern as to whether the new statute contains the language necessary to enable assessed penalties to be collected. Mr. Reineke indicated he thought the language of the new act is adequate to assure collection of assessed penalties.

Mr. Adams commended the Department for its diligent work on these issues and the progress which has been made.

2. REPORT RE: SETTLEMENT AND MEDIATION OF SECOND INJURY FUND CASES

Mr. Reineke reported he is continuing to work with the Assistant Attorney General Diane Dycus to reach a Memorandum of Understanding by which the attorneys for the Second Injury Fund will be given some settlement authority. He stated he expects this to be completed within the next month and that a final proposal will be available for the Advisory Council to review.

Mr. Reineke reported the Second Injury Fund settles 50-60 cases per year and this settlement authority process would be expected to add to this number. The Department currently has in excess of 900 open cases and 30-35 new cases are opened each month. Mr. Reineke stated approximately 10-20% of Second Injury Fund cases go to trial, which he feels is similar to workers' compensation cases in general. Half of the Second Injury Fund cases are pending in the Eastern Grand Division; 240 in the Western Grand Division (mostly in upper West Tennessee) and the remainder in Middle Tennessee. There are five attorneys handling the Second Injury Fund cases. Mr. Reineke stated they will open 40 more cases in 2000 than the total number of cases opened in 1999.

3. REPORT RE: ASSIGNED RISK PLAN

Mr. Thomas G. Redel, CPCU, Aon Risk Services presented information concerning the status of the Assigned Risk Plan in Tennessee. Aon is a leading insurance brokerage company as well as the Plan Administrator for the Tennessee Assigned Risk Plan. Mr. Redel reported Aon is not only seeing a number of changes in the Tennessee workers' compensation insurance market, but also in all other states. The Tennessee data shows some growth in the Assigned Risk Plan in the past year from a low of $18.9 million in December of 1999. Historically, the Assigned Risk Plan included $60.8 million of premium in 1997 and $23.2 million of premium in 1998.

Mr. Redel presented information concerning the Tennessee servicing carriers and the Tennessee direct assignment carriers for the Assigned Risk Plan. A direct assignment carrier is assigned risks [insured employers] based on the percentage of market share the insurance company has in the Tennessee voluntary market. A servicing carrier writes the actual insurance policy for all risks not assigned to the direct assignment carriers and is selected through a competitive process by Aon. Mr. Redel noted a direct assignment carrier does not participate in any Plan deficit, but bears the risk of its own direct losses without any indemnification by other carriers. Mr. Redel also explained that Travelers services all policies written in the Assigned Risk Plan except the risks written by AIG. Mr. Redel stated the total amount of premiums assigned to the servicing carriers decreased from 1998 to 1999 and again in 2000 due to the entry of CNA as a direct assignment carrier. This information generated a discussion among the Advisory Council members as to why CNA Insurance Company would elect to become a direct assignment carrier in 1999 and how the risks are allocated among the direct assignment carriers.

Mr. Redel noted the total written premium from 1/1/99-8/31/99 was $13,322,700.00 and the total written premium from 1/1/00-8/31/00 was $16,904,291.47, which is a $26.9% increase in the amount of premiums. Comparison of the same periods of time, reveal the number of policies written in the Assigned Risk Plan increased 12.3%. This is an indication that larger size employers are returning to the Assigned Risk Plan in the year 2000.

Mr. Redel also reported in addition to the general increase in overall premium volume in the Plan, there is also an indication that the employer type composition is changing. Policies between $10,000 - $24,999 in premium increased by 50.3% during the first eight months of 2000 compared to the same time period in 1999. Additionally, the number of accounts in the $50,000 - $100,000 range increased from 11 to 21 accounts. A comparison of the top ten classifications by year was also presented. The data revealed changes in the top ten classifications (by premium written) when comparing the period 1/1/99-8/31/99 to the same period in 2000. Mr. Redel indicated a lot of construction employers had been able to find coverage in the voluntary market when competition was at its height but in the past year the number of construction employers in the Plan has increased, especially in the roofing classification. This increase may be explained by a special roofing program CNA had implement which collapsed. In addition, the number of employers in the classification of "clerical office employees" increased in premium dollars from tenth in 1999 to third in 2000.

Mr. Redel informed the Advisory Council that in the past year, Wausau was absorbed by Travelers. Mr. Pitts questioned whether it was wise to have only two servicing carriers in the Tennessee plan as a result of that acquisition. Mr. Redel then explained Hartford exited in April, 2000 as a servicing carrier in Tennessee so Liberty Mutual is the only servicing carrier in Tennessee. When asked if this was a good idea, Mr. Redel noted on a national basis there are only two major insurance companies which participate as servicing carriers. He expressed the opinion that if Aon initiated a bid process to obtain an additional servicing carrier the likely result would be an increase in the servicing fees.

Mr. Pitts asked for a status of the issue concerning providing multi-state coverage for employers who are covered in the Assigned Risk Plan. Mr. Redel stated a handful of states have allowed Aon to extent coverage into the other state but that is limited to accounts below $250,000 of payroll in the other state. Aon is considering an agreement with the National Workers' Compensation Reinsurance Pool which would allow that entity to add Tennessee employers to their policies and vice versa which would then offer similar services to Tennessee employers as are offered by other states.

Mr. Pitts also inquired whether Aon audits the servicing carriers for compliance. Mr. Redel reported AON audits both servicing and direct assignment carriers on-site. These audits are performed by Aon and not by outside auditors. Mr. Redel agreed to supply the members with additional information regarding Aon's auditing process.

Mr. Pitts then questioned whether a tiered rating system within the Assigned Risk Plan should be considered in light of the fact that activity in the Plan is increasing yet not all companies within the same "class code" have equally poor loss experience. He noted these employers are being punished although their multi-year experience may be excellent and far better than the class in general. Both Mr. Redel and Ms. Booth indicated other states do have provisions in their assigned risk plans which give credits to companies based on multi-year good experience. Ms. Booth agreed to provide information to the Advisory Council concerning other states' plans.

Mr. Adams asked Mr. Redel his overall opinion concerning the changes which are occurring in the Plan. Mr. Redel stated the Plan will continue to grow and may continue to grow by a 20% increase in premium next year. However, he reminded the Advisory Council part of the increase in premiums for 2000 resulted from the overall 18.66% rate increase in the Assigned Risk Plan premiums which resulted from the filing effective March 1,2000 and part is attributable to the increase in the number of policies written in the Plan. Mr. Redel opined that it will not take long for a competitive market to reach its price equilibrium. He feels the current activity is a result of reactionary action by some carriers to bad loss experience in certain markets and the national carriers have made decisions not to write certain classes of business without regard to the specific experience of the class in a particular state. Mr. Redel stated he does not think the rate of growth in the Tennessee Assigned Risk Plan will return to its previous growth patterns and that the Tennessee Plan will remain below the 10% trigger threshold contained in Tennessee law.

4. LOSS COSTS - STUDY METHODOLOGY

Mr. Sims explained that he and Linda Hughes were working on a Request for Proposal to engage a company to perform a study of the loss costs system in Tennessee. Copies of the "Scope of Services" portion of the RFP were distributed to the members for review and they were requested to provide any comments or suggestions for additions or changes to the RFP by noon on the following day. He also requested the Advisory Council's approval to proceed with the RFP process. A motion was made by Mr. Pitts and seconded by Mr. Neeley to approve the RFP process. The motion was adopted by the unanimous vote of the four voting members present in person or by proxy.

The meeting was then adjourned until the next meeting, currently scheduled for November 16.